1962

Lorenzo C. Forsey v. E. Girard Hale : Appellant's Reply Brief

Utah Supreme Court

Callister & Kesler; Attorneys for Appellant;
Romney & Nelson; Attorneys for Respondent;

IN THE SUPREME COURT
of the
STATE OF UTAH

LORENZO C. FORSEY,
Plaintiff-Respondent

vs.

E. GIRARD HALE, as Executor of the Will and Estate of Mabel Bean Forsey, Deceased,
Defendant-Appellant.

Case No. 9585

APPELLANT'S REPLY BRIEF

APPEAL FROM THE JUDGMENT OF THE THIRD DISTRICT COURT FOR SALT LAKE COUNTY
HON. STEWART M. HANSON, JUDGE

CALLISTER & KESLER
619 Continental Bank Building
Salt Lake City 1, Utah
Attorneys for Appellant

ROMNEY & NELSON
404 Kearns Building
Salt Lake City 1, Utah
Attorneys for Respondent

TABLE OF CONTENTS

Page

STATUTES CITED

IN THE SUPREME COURT
of the
STATE OF UTAH

LORENZO C. FORSEY,
Plaintiff-Respondent

vs.

E. GIRARD HALE, as Executor of the Will and Estate of Mabel Bean Forsey, Deceased,
Defendant-Appellant.

Case No. 9585

APPELLANT'S REPLY BRIEF

The question in this case is very simple.

Query, is the respondent Lorenzo C. Forsey, under and by virtue of Section 75-9-21 Utah Code Annotated 1953, entitled to reimbursement for expenses for the last illness of the deceased, Mabel Bean Forsey?

Our answer is emphatically no.

From the statement of facts as set forth in the appellant's brief, it is clear that the respondent paid no amounts for the last illness of the deceased. In respondent's brief, he makes the following statements:

Respondent agrees with the statement of

facts set forth in appellant's brief, except as follows:

> From the record it is not clear whether the amounts paid by Lincoln National Life Insurance Company were reimbursed to the Respondent, or paid direct to the hospital and doctors, nor is it clear whether such amounts were paid before or after the death of decedent. (R. 10)

It is impossible for us to follow the reasoning and statements of respondent in the above quotation for the reason that in paragraph 3 of the pretrial order (R. 9, 10), that it was not the payment of respondent's money (for the last illness), but was a payment by the insurance company in the direct sum of $1205.41 by checks or vouchers of the insurance company directly to the claimants, the hospitals and doctors.

There is no question that anybody making payments under and by virtue of Section 75-9-21 Utah Code Annotated 1953, and complying with such provision of the code, entitles him or her to reimbursement by the executor or administrator as a necessary expense of administration. However, in this case, the respondent has not so qualified.

It seems rediculous and absurd that a husband be entitled to obtain, under Section 75-9-21 Utah Code Annotated 1953, moneys paid by the insurance company on the life of his spouse, who

is a member of the group insurance. This is in substance the contention of the respondent.

The statements in respondent's brief are so contradictory and absurd that it seems a waste of time to answer the same.

Mr. Forsey further states in his brief, page 5, that these expenses (last illness) had been paid by him as surely as if he had taken the money out of his own pocket. This is so ridiculous that it does not require an answer.

For some unknown reason, the respondent has the erroneous contention that the issue here involved is related to the general rule that compensation or indemnity received by a claimant from a collateral source, wholly independent of the wrongdoer cannot be set up by the latter in mitigation or reduction of damages.

The respondent further quotes the law that where a person suffers personal injury or property damage by reason of the wrongful act of another, an action against the wrongdoer for the damages suffered is not precluded nor is the amount of the damages reduced by the receipt by him of payment for his loss from a source wholly independent of the wrongdoer.

By what stretch of the imagination could it be said that the deceased was a wrongdoer, or that the issue in question comes within the statement

of law enunciated by the respondent?

For some unknown reason, not understandable to this appellant, the mistaken idea prevails that the estate is recipient under the theory of unjust enrichment. All that the deceased was receiving was what the insurance company contracted to pay in the event of illness.

If there is any unjust enrichment, it would certainly apply to the respondent in the event that he prevailed in this action.

For the respondent to prevail in this case would be to hold that a joint assured is entitled to moneys from the estate of the deceased for moneys paid under the contract of insurance by the insurance company.

We further conclude that the only way that respondent could prevail would be to make the proper showing as provided for by Section 75-9-21 Utah Code Annotated 1953, which he has failed to do.

Respectfully submitted,

CALLISTER & KESLER
By Louis H. Callister

Attorneys for Appellant

619 Continental Bank Building
Salt Lake City 1, Utah